



United States Department of the Interior

NATIONAL PARK SERVICE
Golden Gate National Recreation Area
Fort Mason, San Francisco, California 94123

IN REPLY REFER TO:

A3815 (GOGA-SUPT)

JAN 16 2001

Louise Renne
City Attorney
Office of the City Attorney
City Hall
1 Dr. Carlton B. Goodlett Place, Suite 234
San Francisco, CA 94102-0917

Louise
Dear Ms. Renne:

I am writing in response to your December 19, 2000 letter to me regarding Fort Funston closures, which was received in this office January 2, 2001.

As explained in detail below, the National Park Service's management of the areas of Fort Funston transferred from the City of San Francisco ("City") to the United States has been entirely consistent with both the 1975 deed of transfer and the agreement between the City and the United States regarding such transfer ("Agreement").

First, in your letter, you requested that the Golden Gate National Recreation Area ("GGNRA") provide you with an explanation of how the recent closures at Fort Funston are consistent with the deed transferring certain parcels of Fort Funston from the City to the United States. The 1975 deed requires that the subject land be "used for recreation *or* park purposes." (emphasis added.) In fact, the vast majority of Fort Funston lands are available for recreational use *and* park purposes. Over 80% of Fort Funston is open and available for public use and enjoyment.

However, "public use and enjoyment," including recreation, represents only one aspect of the GGNRA's "park purposes." Some areas of Fort Funston have been closed to park visitors in order to serve those "park purposes" other than recreation. Both the 1975 Agreement and Section 1 of the GGNRA's 1972 legislative mandate define the use and management of this area:

"[T]he Secretary of the Interior . . . shall preserve the recreation area, in its natural setting, and protect it from development and uses which would destroy the scenic beauty and natural character of the area." (16 U.S.C. Sec. 460bb.)

Similarly, the 1916 National Park Service Organic Act, which governs each and every park area, requires that national park resources and values are managed in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. Sec. 1. In 1978 Congress added to this mandate, requiring that NPS management of park areas "shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." (16 U.S.C. Sec. 1a-1.) The 2001 NPS Management Policies, Section 1.4, further require that, "The 'fundamental purpose' of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. . . . NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values." And, "Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant." (Enclosure 1).

Accordingly, on lands administered by GGNRA, the term "park purposes" includes uses far beyond just "recreation," such as preservation of natural character and natural beauty of all park resources. This fact was well understood by both the City and the United States during the 1975 transfer. Neither the City nor the United States intended to transfer Fort Funston with a use mandate that was inherently inconsistent with the NPS Organic Act and the GGNRA Enabling Act.

The 1980 GGNRA General Management Plan (GMP, "Plan,") (Enclosure 2) describes more specific application of the NPS mandate to lands within GGNRA, including Fort Funston. Specifically, the Plan describes Fort Funston as one of similar areas that "still contain isolated populations of natural wildlife and vegetation which will be carefully preserved. When choices are available . . . they should favor native species whenever possible." Further, "[t]he natural appearance of . . . Fort Funston . . . will be maintained . . . wherever possible along the ocean shoreline the dune environment will be restored." Generally, the GMP asserts "[t]here are very important habitat areas throughout the park, including the habitats of several threatened or endangered species, that will

require special management efforts.” “[B]ird habitats have been identified as areas warranting special protection, and visitor use will be carefully controlled in and near these areas.”

These plans for Fort Funston, as well as other areas of the park, were reviewed and accepted by the City. Throughout the GMP planning process, NPS and City planning officials worked closely to assure acceptance of the final plan, consulting closely and frequently during the plan's development. As described in a December 5, 1979, letter to the park from the Department of City Planning (Enclosure 3), the City stated “we believe that the Management Plan is consistent with our long-standing policies of public access to recreational and open space areas.”

The closures in effect at Fort Funston are entirely consistent with the park's legislative mandates, its GMP, and the use of Fort Funston for “park purposes.” Justification for the 12-acre closure was provided to the City a number of months ago and is provided again here for your reference (Enclosure 4). In summary, this area is closed to protect the state threatened bank swallows, permit native plant restoration, reduce erosion and for visitor safety. The area to the north of the new 12-acre closure, referred to in your letter as the “1995 closure” is not, in fact, a closed area. Rather, this area is open to on-trail use via the trail and is a beach access at Fort Funston. This area is fenced only to keep people and pets from off-trail use in order to protect and preserve the natural habitat, as called for in the park's legislative mandate and the GMP. There has been a significant increase in quail, rabbits, and other native species in this area since fencing the area and restoring native vegetation there.

We have also reviewed the City's plans and believe our actions are consistent with its content. Specifically, the Westside Shoreline Area Plan identifies the following policies for Fort Funston: “Conserve the natural cliff environment along Fort Funston; Policy 1 – Maximize the natural qualities of Fort Funston. Conserve the ecology of the entire Fort and develop recreational uses which will have only minimal effect on the natural environment. Policy 2 – Permit hang gliding but regulate it so that it does not significantly conflict with other recreational and more passive uses and does not impact the natural quality of the area.” Among other things, the 12-acre closure and the 1995 northern fenced area specifically limit uses which have adverse effects on the natural environment at Fort Funston.

Second, in your letter, you cite the portion of the Agreement requiring the GGNRA to consult with the City's Planning Department “on all matters relating to construction on the lands transferred by the City” and you suggest that GGNRA is obligated under this section to consult with the City on fence installation. Until now, we are unaware of any interpretation by the City that “construction” and specifically, “building, roadway, parking lot or facility, pier,

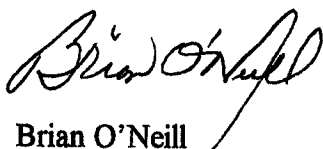
or any structure or substantial alternation of the natural environment" could mean a fence. A full reading of this section reveals the intent that on significant construction projects, GGNRA should consult with the City and allow the City Planning Department to review such plans "for conformance to the Master Plan of the City and possible adverse effect on the traffic patterns and traffic safety on public streets of the City." Clearly, fence installation near the cliffs at Fort Funston fall short of this consultation requirement. We would consider consultation on small scale resource management and public safety projects, such as fences, signs, or posts, to be an inefficient use of our respective staff's time, particularly when such minor items are in furtherance of the objectives of NPS and the City as set forth above.

Our records confirm that the GGNRA has not consulted with the City on resource management improvements or visitor safety actions, such as fence installation or removal of dangerous trail segments. Rather, we have relied on the cornerstone document that the City concurred with in 1979, the GMP, which guides our actions. We have, however, consulted with the City on significant planning efforts such as the Sutro Heights Comprehensive Design plan. We continue our commitment to consultation with the City on construction planning level and design documents.

Finally, in your letter, you suggest that the park's actions with respect to the Sunset Trail are inconsistent with federal law. The 2001 NPS Management Policies state that "[a]ll reasonable efforts will be made to make NPS facilities, programs and services accessible and useable by all people, including those with disabilities." (Section 8.2.4). The Sunset Trail was closed and the pavement was removed because of visitor safety concerns. Specifically, the paved trail was dangerous, due to ongoing erosion and undermining on the cliff side. The number and frequency of visitors and pets requiring rescue from the cliff immediately adjacent to the trail in this area was sharply increasing. As a result, the paved portion was removed and the trail was temporarily closed. Since then, the trail has been reopened (without pavement), but remains unsuitable for repaving. Because natural cliff erosion averages one foot per year at Fort Funston, the park has determined that a trail realignment is required. The park will be evaluating the possibility of realigning and paving the trail, consistent with federal laws and park policies, subject to available funds.

In conclusion, the GGNRA management actions exercised at Fort Funston are well within the scope of park purposes, and are consistent with our Agreement

with the City. We look forward to working with you and the public in the future and welcome any further questions or comments that you may have.



Brian O'Neill
General Superintendent

Enclosures:

- (1) 2001 National Park Service Management Policies
- (2) Golden Gate National Recreation Area General Management Plan
- (3) Letter from San Francisco Department of City Planning
- (4) Decision Regarding Fort Funston Habitat Protection Closure dated December 14, 2000

cc: (w/o enclosures)

Ralph Mihan, Field Solicitor

Nicole Walthall, Assistant Field Solicitor